92-316

Supreme Court, U.S.
FILED
MAR 9 1992
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No.

In The

# Supreme Court of the United States

October Term 1991

**ROBERT A. PFLUGER,**

*Petitioner,*

v.

**COMMISSIONER OF INTERNAL REVENUE,**

*Respondent.*

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

## PETITION FOR WRIT OF CERTIORARI

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## Question Presented For Review

I. Whether or not Petitioner can be fined and his case dismissed for presenting a Constitutionally sound argument against the Income Tax when it can be cited by our Founding Fathers and a Supreme Court Justice that "levelling" is unconstitutional?

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## Jurisdictional Statement

Petitioner appeals pursuant to 28 U.S.C. Section 1254 and U.S. Supreme Court Rule 13, by timely notice of appeal filed on January 8, 1992. A copy of said notice is included in Petitioner's Appendix herein at page 1.

Petitioner appeals a judgment entered by the United States Court of Appeals for the Seventh Circuit dated December 10, 1991 and all decisions relative thereto. A copy of said decision is included in Petitioner's Appendix at page 2.

This Court has jurisdiction pursuant to the statutes cited above and letters of authorization sent by the clerks of this Court dated April 6, 1992 by Loretta S. Ruffin and April 23, 1992 by Francis J. Lorson, Chief Deputy Clerk.

## Statement of the Case

On or about December 18, 1989, Petitioner Robert A. Pfluger timely filed a timely petition to contest alleged income tax deficiencies relative to a Notice of Deficiency issued by the Internal Revenue Service for the tax years 1983, 1984 and 1985. (Doc. 2, 7.)

The Tax Court, Chief Judge Arthur L.Nims, III presiding, entered a decision on or about July 26, 1990 which determined deficiencies in taxes owed in the total amount of $77, 342, with additions to tax totalling $39,026, and sanctioned petitioner with penalties in the amount of $15,000 pursuant to I.R.C. section 6673. (Doc. 15) On October 9, 1990, petitioner filed a timely notice of appeal of the decision pursuant to Section 7482 of the Internal Revenue Code. (Doc. 17.)

On or about December 10, 1991, the Seventh Circuit U.S. Court of Appeals, Judges Posner, Coffey and Ripple presiding, dismissed petitioner's arguments on appeal as *"frivolous"* and sanctioned petitioner an additional $1,500 without oral argument.

This Court has jurisdiction to entertain this appeal as Petitioner filed a timely notice of appeal from the Appellate Court's decision on January 8, 1992 to this Court pursuant to 28 U.S.C. Section 1254.

## Argument

The United States Court of Appeals for the Seventh Circuit has decided an important question of federal law in a self-serving way which conflicts with past legal principles and decisions handed down by this Court and the rights of the individual petitioner, Robert A. Pfluger, but also impacts adversely, all Americans and their rights to petition their Government for redress of grievances under the United States Constitution. This Court should set petitioner, and those similarly situated, free to speak their own beliefs in their defense to attacks against their persons and property without fear of unreasonable censorship or penalty for having the courage to voice their sincere thoughts to their government through the courts.

### I. Petitioner's sincere, good-faith belief that "levelling" is unconstitutional protects him from prosecution or sanction for the mere inquiry of relief by Tax Court petition.

This Court recognizes that due to the complexity of the tax laws, the law requires that special treatment be afforded those who assert constitutional protections based upon sincere good-faith beliefs and ideas that alleged tax deficiencies

owed are unconstitutional as applied to them. *U.S. v. Murdock*, 290 U.S. 389 (1933); *Cheek v. U.S.*, 112 L.Ed.2d 617 (1991). Petitioner cannot be punished by any court, by tax penalty or otherwise, for the mere assertion of the constitutional rights which are his to freely exercise, as to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). U.S. Const. Amend. 1, 9, 10.

**II. "Levelling" is unconstitutional, and forms a legitimate basis for petitioner to challenge alleged income tax deficiencies.**

"Levelling" for the purpose of petitioner's argument, may be defined as a forced and involuntary redistribution of wealth from one class of society to another class of society. This Court has declared in the past:

> "A law that punishes a citizen for an innocent action, or in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law

> that takes property from A and gives it to B, -- it is against all reason and justice for a people in intrust a legislature with such powers, and therefore it cannot be presumed that they have done it."

*Calder v. Bull*, 3 Dall. 386, 388, 1 L.Ed. 648, 649; *Dodge v. Mission Tp., Shawnee County, Kan.*, 107 F. 827, 46 C.C.A. 661, 54 L.R.A. 242 (1901). The legislative power of taxation is limited to the exercise of a public object, and it cannot be successfully prostituted for private purposes. *Sharpless v. Mayor, etc. of Philadelphia*, 21 Pa. 147, 169 (1853). The intent of the 16th Amendment was not to get rid of the intent to prevent levelling but to raise monies by taxes on incomes to pay for increasing government expenses such as for roads, bridges, canals, buildings, salaries, etc., all of which were non levelling items. All laws which are repugnant to the Constitution are null and void. *Marbury v. Madison,* 5 U.S. (Cranch) 137, 174, 176 (1803).

An Appellate Court should not be permitted to create by mere fiat, nonexistent authority by citing itself as authority for principles which conflict with this Court's well-established rules of law. *Pfluger v. Commissioner,* 840 F.2d 1386 (7th Cir. 1988). The the best of petitioner's knowledge, the Supreme

Court has never ruled on whether or not the Income Tax is unconstitutional because it is used as a levelling device. Petitioner has not made a knowing or intentional waiver of a legal right or privilege to assert his sincerely held beliefs which he holds as important and legitimate issues. *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Petitioner in good faith submitted authority of this Court to the Tax Court to support his position that "levelling" is unconstitutional as an improper and unlawful mechanism for redistribution of wealth from one class of people to another class and is used as a means to enforce the laws passed by Congress to control the free citizens rather than keep them free from the control of others as per the Preamble to the United States Constitution, ... "to enjoy the blessings of liberty..." Justice Harlan dissenting in *Douglas v. California,* 372 U.S. 353, 9 L.Ed.2d 811, at 817-18. (1963). *See also, Life of Samuel Adams,* p. 154. The lower courts, however, have refused to offer any relevant authority in denying petitioner's defense.

## CONCLUSION

The Constitution is constructed in such a way as to prevent the involuntary redistribution of wealth from one class of people to another and to permit the voluntary redistribution of

wealth from one class of people to another by having unavoidable direct taxes and avoidable indirect taxes and a tax on income to pay for government expenses which are not used to levell society.

Therefore, petitioner respectfully requests that this Court grant petitioner's petition for Writ of Certiorari in this cause to protect the rights of all individuals in this nation.

Dated this 12 day of Aug, 1992.

Respectfully submitted,

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## APPENDIX


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In The

# United States Court of Appeals

For The Seventh Circuit

No. 90- 3266

ROBERT A. PFLUGER,

*Petitioner-Appellant,*

v.

COMMISSIONER OF
INTERNAL REVENUE,

*Respondent-Appellee*

## NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Robert A. Pfluger hereby appeals to the United States Supreme Court from all decisions and orders entered against him by the United Stated Court of Appeals for the Seventh Circuit and the United States Tax Court, including, but not limited to the following:

The Tax Court Decision of Judge Arthur L. Nims, III, entered on or about July 26, 1990;

The Seventh Circuit Decision by the Honorable Judges Posner, Coffey, and Ripple in 90-3266 dated on or about December 10, 1991.

The appeal is taken pursuant to 28 U.S.C. Section 1254 and any other lawful statutory authority.

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ATTACHMENT A

# United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

**AGENCY JUDGMENT**
**Without Oral Argument**

**Date: December 10, 1991**

**BEFORE**: Honorable Richard A. Posner, Circuit Judge

Honorable John L. Coffey, Circuit Judge

Honorable Kenneth F. Ripple, Circuit Judge

No. 90-3266

ROBERT A. PFLUGER,
Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

Appeal from the United States Tax court, No. 30622-89

This cause came before the Court for decision on the record from the UnitedStates Tax Court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that this appeal is DISMISSED, with costs, and the appellant is assessed a $1500 sanction to be paid to the appellee to cost of this litigation, in accordnace with the order of this Court entered this date.

UNITED STATES TAX COURT
Washington, D.C. 20217

ROBERT A. PFLUGER,
Petitioner,

v.

Docket No.
30622-89

COMMISSIONER OF INTERNAL
REVENUE, Respondent.

ORDER OF DISMISSAL AND DECISION

Pursuant to the oral findings of fact and opinion rendered at the hearing on July 11, 1990, in this case, it is

ORDERED that respondent's motion to dismiss for failure to state a claim upon which relief can be granted filed April 27, 1990, and respondent's oral motion for damages under I.R.C. section 6673, is granted in that this case is hereby dismissed for failure to state a claim upon which relief can be granted. It is further

ORDERED and DECIDED that there are deficiencies in income taxes and additions to the taxes due from the petitioner as follows:

| Year | Deficiency | Sec. 6653(a)(1) | Sec. 6653(a)(2) |
|---|---|---|---|
| 1983 | $31,522.00 | $1,576.10 | * |
| 1984 | 21,885.00 | 1,094.25 | * |
| 1985 | 23,935.00 | 1,196.75 | * |

| Year | Sec. 6651(a) | Sec. 6654(a) | Sec. 6661(a) |
|---|---|---|---|
| 1983 | $7,464.00 | -0- | $7,464.00 |
| 1984 | 3,786.00 | $1,109.00 | 3,786.00 |
| 1985 | 5,089.00 | 1,372.00 | 5,089.00 |

* 50 percent of the interest due on the underpayment of tax attributable to negligence. It is further

ORDERED and DECIDED that damages in the amount of $15,000 are awarded to the United States pursuant to I.R.C. Section 6673.

(Signed) ARTHUR L. NIMS, III

Arthur L. Nims, III
Chief Judge

Entered: July 26, 1990